

REX RAILWAYS

6-226A016

RECORDATION NO. 15026 Filed 1986

AUG 14 1986 -10 56 AM

INTERSTATE COMMERCE COMMISSION

Re. AUG 14 1986
Date
Fee \$ 10.00
ICC Washington, D. C.

Ms Mildred Lee, Chief
Interstate Commerce Commission
12th & Constitutional Ave., N.W.
Room 2303
Washington, D.C. 20423

Dear Ms Lee:

Enclosed please find three originally signed leases dated June 26, 1986 between Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, N.J. 07632 and the Chicago and North Western Transportation Company, One North Western Center, Chicago, Illinois 60606 representing a lease for 500 boxcars. The leases are properly signed and notarized. We would appreciate your recording these and \$10.00 is enclosed for same. Thank you for returning the receipt to us in the envelope supplied for your convenience.

Most cordially yours,

Mark A. Salitan

Mark A. Salitan
President

MAS:jgm
Encl.

ICC OFFICE OF
THE SECRETARY
AUG 14 10 56 AM '86
MOTOR OPERATING UNIT

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Mark A. Salitan-President

REXX RAILWAYS, INC.
616 Balisade Ave.
Englewood Cliffs, New Jersey 07632

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8-14-86 at 10:56 A.M., and assigned recordation number(s). 15026 and 15027

Sincerely yours,

Noreta R. McGee

Enclosure(s)

SE-30
(7/79)

LEASE

AUG 14 1986 -10 56 AM

INTERSTATE COMMERCE COMMISSION

THIS LEASE dated as of June 26, 1986, between Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632, ("Rex or Lessor"), and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, One North Western Center, Chicago, Illinois 60606, (the "C&NW or Lessee").

1. Scope. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, up to 500 Plate C, cushioned 50' 6" Boxcars of the description set forth in the attached Schedule "A". A listing of the reporting marks and numbers is contained on the attached Schedule "B", it being the intention of the parties hereto that this contract shall be deemed to be a lease. "Cars" shall mean all the boxcars subject to the lease and "Car" shall mean an individual boxcar subject to this Lease.

2. Rental Per Car.

- A. Rex agrees to make demand in writing to remove, due to an existing contract with another railroad, 400 cars.
- B. Only if successful in recovering all or part of these cars, Rex agrees to lease the Cars to the CNW on the following basis:
 - (1) 50-50 sharing of all net off-line car hire earnings including mileage and time charges, or any future method of arriving at car hire

earnings. Net off-line car hire earnings shall be defined as car hire earnings of the Cars while off the CNW lines minus Car Hire Rule 5 reclaims paid by CNW for these Cars. CNW shall pay no car hire to Rex while these Cars are on CNW lines.

3. Term. Rex agrees to lease promptly all the Cars recovered to the CNW. Rex further agrees that a total of 500 Cars will be leased to CNW by February 1, 1988, with an expiration of January 31, 1991.

4. Renewal and Take Back.

A. Those Cars which are still managed by Rex at the time of the original lease expiration, i.e. January 31, 1991, will be made available for renewal by the CNW at CNW's sole discretion for an additional three years, at a rate of (1) or (2) below at Rex's sole option:

- (1) The Rate as described in Paragraph B of Section 4 of this lease, or
- (2) \$250.00 per Car per month.

If CNW exercises its right not to renew this Agreement with respect to any or all Cars, CNW shall return those Cars to Rex and this Agreement shall be terminated with respect to the Cars not subject to renewal. CNW may either accept the

option as specified by Rex or return the Cars to Rex and terminate this Agreement with respect to any or all Cars.

B. A Formula for take back of the Cars will be as follows:

- (1) If the off-line utilization of the Cars, as defined in Section 4B(2) hereof, shall fall below the level specified in the Formula for any calendar quarter, Rex agrees to recalculate the off-line utilization for the prior three quarters' period in aggregate. If a deficiency still exists under the calculation of the prior three quarters' utilization, Rex may, within 60 days after all rental payments shall have become due and payable for that calendar quarter, give CNW 30 days' written notice of its election to reclaim and remove from this Lease, that portion of the Cars in the same percentage as that prior three quarters' utilization deficiency relative to the Base amount, in minimum groups of 200 Cars:
- (2) The Formula for determining off-line utilization shall be compared for a three-month period to the total earnings paid to Rex with

a "Base Amount." The "Base Amount" shall be calculated as follows: The average car hire rate for the Cars (time portion only) prevailing at the time x 24 hours x 7.5 days x 3 months x the number of Cars = \$ x (x is the "Base Amount").

- (C) If Option 4A(2) herein is selected by Rex for the lease renewal, no take back clause will be in effect. If Option 4A(1) is selected and CNW falls below the minimum as stated in 4B above, Rex has the right to convert the Lease to Option 4A(2), at which time CNW may either accept this option, or return the Cars to Rex and terminate this Agreement with respect to any or all Cars.
- (D) Prior to reverting to Method 4A(1) above, if the CNW should qualify to have the cars taken back, under the Formula described in Paragraph 4B herein, the CNW may use its portion of the next quarter's earnings to adjust Rex's portion of its earnings to the predetermined level as described in the Formula, and agrees to do so in each ensuing quarter until that quarter's and any immediately subsequent quarter's deficiency is made up. Once such a deficiency is redressed, Rex agrees to comply with the provisions of Paragraph

4B for any deficiency that may result subsequently. CNW shall not be required to make any payments to Rex in the redress of any deficiency other than the mutually agreed upon adjustment to CNW's portion of the car hire earnings on the Cars. CNW shall also not be required to make up any or all deficiencies in earnings for quarterly periods prior to the quarter upon which Rex provided notice under Paragraph 4B of such a deficiency in earnings.

- (E) Rex's earnings, when considering take-back provisions, remedies, and other calculations will be based on the total number of Cars as an aggregate, not individually. Rex's earnings as used in the calculations for the take back of the Cars, shall be Rex's share of the earnings prior to the deduction or payment of any amounts due CNW on account of taxes or remarking/repainting the Cars, and shall exclude all Cars in a heavy bad order condition.

5. Remarking. Rex shall pay to CNW the cost of remarking the Cars to CNW reporting marks and/or repainting part or all of each Car. Remarking the Cars with new initials and numbers will cost \$50 per Car, blocking out logos, etc., will cost an additional \$25 per Car. Repainting of any pink Cars or any other

Car mutually determined to need complete repainting will cost \$200 per Car including initials and numbers. Upon expiration or termination of this Agreement, Cars shall not move off CNW lines with CNW marks unless agreed to by the CNW. Cost of remarking and/or repainting the Cars if performed by CNW will be the same as at lease initiation and shall be paid by Rex. CNW shall have the option to either present a bill to Rex for the cost of this remarking and/or repainting which Rex shall promptly pay or to deduct these costs from the car hire earnings of the Cars due Rex. If this Agreement is terminated for any or all Cars in accordance with Section 4B of this Lease, CNW will remark those Cars reclaimed at CNW's expense.

6. Maintenance, Taxes and Insurance. (a) Lessee shall maintain the Cars in good operating condition, ordinary wear and tear excepted. All repairs, whether on or off Lessee's trackage, shall be at Lessor's expense, except as otherwise provided in this Section. The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all applicable laws of the jurisdictions in which the Cars may be operated, with the Interchange Rules and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Cars, to the extent that such laws and rules affect the title, operation or use of the Cars. In the event that, prior to the expiration of this Lease, such laws or rules require the altera-

tion of the Cars or in case any equipment or appliance on any Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Car in order to comply with such laws, regulations, requirements and rules, such alterations will be made at the sole cost and expense of the Lessor.

(b) Lessee shall not make any alteration, improvement or addition to any Car without the prior written consent of Lessor thereto which shall not be unreasonably withheld and all such additions which are removable may be so removed by Lessee upon termination of this Lease.

(c) Lessee shall be responsible for the damage to or destruction occurring to any Car while on its trackage, ordinary wear and tear excepted. Lessee shall pass through to Lessor any settlement received by it as the result of any damage to or destruction of a Car occurring while on the trackage of others. All settlements for damage to or destruction of any Car occurring on or off Lessee's property shall be in accordance with and on at least as favorable terms as those set forth in the Field Manual of the AAR Interchange Rules, and shall be in U.S. Dollars. Settlements for damaged or destroyed Cars shall be in accordance with AAR Rule 107 and payable in U.S. Dollars.

(d) Lessor shall be responsible for the filing and payment of all taxes, assessments and other governmental charges of whatsoever kind or character which may be accrued, levied,

assessed or imposed during the lease term and which relate to the operation and use of any Car. However, Lessee shall reimburse Lessor for property taxes paid.

(e) The parties acknowledge that Lessee intends to be self-insured as to the Cars during the term of this Agreement. Should Lessee carry any insurance policies covering the Cars, Lessor shall be named an additional co-insured.

(f) When a Car becomes heavy bad ordered (heavy is to be defined as requiring 20 or more hours of labor), and the bad order is for the account of Rex, the CNW agrees to:

- (1) Notify Rex of same.
- (2) Give Rex the right to repair the Car at its selected repair location.

CNW, however, has the right in this instance, to match any labor rate and perform the repair. In any event, Rex must give disposition within 30 days of notification. Any shop time over 90 days must be due to waiting for material, i.e. parts, paints, etc. Rex agrees that should a heavy bad order Car not be returned to CNW service prior to the 90th day after a heavy bad order occurrence, exclusive of any time waiting for materials necessary to complete the repair, Rex shall pay to CNW for each day beyond these timeframes the prorated average CNW portion of actual net car

hire earnings of the Car in the 12-month period prior to the heavy bad order occurrence.

(g) All costs of movement of Cars under Section 6(f) above of this Lease, including but not limited to line haul freight charges and switching charges, will be for the account of Rex, with CNW using its best effort to assist in obtaining the lowest cost for Rex. There will be no cost for movement while on the CNW. Rex reserves the right to designate a shop on CNW.

(h) Any and all Cars, while being repaired under Association of American Railroads Interchange Rule 107 or heavy bad order as defined in Paragraph 6(f) will be excluded from the Cars in any total "take-back formula", using any part of a month, as a month.

(i) If Rex still has the authority to manage any or all of these Cars at the end of the three year renewal period, the CNW will have the right of first refusal to lease the Cars under the prevailing rates at that time for an additional three years.

7. Storage and Return. Upon expiration or termination of this Agreement with respect to any or all Cars, CNW agrees to provide free storage for the Cars for 90 days. Thereafter, a storage charge of \$5.00 per Car per day shall be paid by Rex to CNW for each and every day Cars are stored on the CNW. Rex shall provide CNW with the reporting marks and numbers to be placed on each Car and CNW shall have 150 days to accomplish this

remarking. The storage period shall end when Rex has provided the CNW with the new reporting marks and numbers for the cars and disposition on the Cars. CNW shall deliver the Cars at no cost to Rex to any CNW interchange point east of the Missouri River as designated by Rex. Rex shall pay any and all transportation costs incurred in the movement of the Cars off CNW lines, including but not limited to line haul freight charges and switching charges. CNW shall pay no car hire to Rex nor any third party for the Cars while transporting the Cars to the interchange as designated by Rex.

8. Contingency. This Agreement is contingent upon the CNW leasing for five years, a minimum of 500 and up to 1,000 Jumbo Covered Hopper Cars as described in a Letter Agreement dated August 20, 1985 from the combined fleets of both Rex Railways, Inc. and Rex Leasing, Inc.

9. Use of Cars. (a) So long as Lessee shall not be in default under this Lease and subject to the next sentence, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Lease. Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into in connection with the acquisition of the Cars, provided that Lessee shall not be required at any time to duplicate any of its obligations hereunder or to assume additional responsibilities due to the terms of any such financing agreement. Upon notice to

Lessee from any such owner or secured party that an event of default has occurred and is continuing, such party may require that all rentals be paid directly to it or the Cars be returned to it. Lessee shall give Lessor at least 10 days' written notice thereof before complying herewith.

(b) It is presently anticipated that Lessee shall keep the Cars in assigned service for clean and non-corrosive loadings. Lessee shall not change such loadings by it without Lessor's consent. Lessee shall not be monetarily liable for any damage to a Car caused by loadings of other railroads.

(c) Lessee agrees that, to the extent it has physical possession or can control use of any Car, such Car shall be used and operated in compliance with the laws of the jurisdiction in which it is located and with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of that Car, except that Lessee may in good faith and by appropriate proceedings or other reasonable manner, not jeopardizing the ownership, use or operation of that Car, contest the application of such act, rule, regulation or order at its expense. Lessee shall operate the Cars in accordance with its management practices as to railroad cars of its ownership.

(d) Lessee shall not directly or indirectly create or allow to exist any claim, lien, security interests, or encumbrance with respect to any car, except for Permitted Encumbrances

as herein defined and shall promptly discharge the same should it arise. Permitted Encumbrances shall mean liens for taxes, assessments or governmental charges for levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's, or other like liens arising in the ordinary course of business and in each case, not delinquent. Provided, however, that the Lessee shall be under no obligation to pay or discharge any such claim, lien, security interest, or encumbrance so long as it is contesting in good faith and by appropriate legal proceedings such liens for taxes, assessments or governmental charges for levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's, or other like liens arising in the ordinary course of business and in each case, not delinquent. Lessee's obligations hereunder shall not arise if any such claim, lien, security interest or encumbrance arose solely through the action or inaction of Lessor or any owner of the Cars or any other person, corporation, railroad company or government, whether federal, state, provincial or municipal.

10. Substitution of Cars; Earlier Termination. (a) Lessor shall have the right at any time and from time to time to substitute one or more Cars of similar design, age and quality upon at least 60 days' notice thereof, all at the expense of Lessor both for the displaced Car and its replacement, the parties shall cooperate with each other to effectuate such

substitution at a mutually agreeable point without unduly burdening Lessee's operation hereunder. Upon such substitution this Lease shall terminate as to the Car being substituted for, and the car substituted in place of that Car shall thereupon become a "Car" for all purposes of this Lease.

(b) Any Car suffering a casualty occurrence shall, upon 30 days' notification to Lessor thereof, no longer be subject to this Lease.

11. Defaults and Remedies. (a) Any of the following events shall constitute an event of default:

- 1) Non payment when due of any amount required to be paid by Lessee if such non payment shall continue for more than 5 days after written notice of such non payment from Lessor;
- 2) Failure to promptly redeliver any Car required to be returned to Lessor hereunder;
- 3) Failure to cure a breach by Lessee of any material term, covenant or condition within 30 days following notice by Lessor of such breach;
- 4) Any act of insolvency or bankruptcy by lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law

- or any other law for the relief of debtors,
or the filing of any such petition or action
against Lessee not dismissed within 60 days;
- 5) Appointment of any receiver or trustee to
take possession of a substantial portion of
Lessee's properties not set aside within 60
days;
 - 6) Levy upon, seizure, assignment, or sale of
any Car, or the eminency of such an event; or
 - 7) Discontinuance of rail service on all or any
major portion of Lessee's trackage.

(b) Upon the occurrence of any event of default,
Lessor may, at its option, terminate this Lease (which shall not
release Lessee from any obligations incurred through such date or
from thereafter paying rentals upon the Cars until they are
returned to Lessor). In such an event, Lessor may proceed by any
lawful means to recover damages for Lessee's breach (to include
transportation and remarketing costs, reasonable attorney's fees
and court costs and other expenses) and to take possession of the
Cars wherever they are located free and clear of Lessee's
interest.

12. Return of Car Upon Termination. Upon termination of
this Lease as to any Car, Lessee shall surrender possession
thereof to Lessor at the place on Lessee's trackage east of the
Missouri River reasonably designated by Lessor or at a place

mutually agreed upon by the parties. All Cars so returned shall be free of debris and in good operating condition, ordinary wear and tear excepted. Lessee shall further provide Lessor up to 90 days free storage on its trackage for any terminated Car in order to arrange disposal thereof, after which if disposition has not been furnished, Lessor shall be liable for storage charges of \$5 per day per car commencing on the 91st day after the termination date of this Lease and ending on the date Lessee received disposition therefor.

13. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided, however, that Lessee shall have the right to sublease any of the Cars to its wholly owned affiliates, or may sublease, for a term not exceeding one year, to a responsible company as determined by the Lessee (without being released from the obligations hereunder). Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease.

(b) All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in

whole or in part without notice to or consent of Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any Lease to Lessor or any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by Lessor, provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. If Lessor shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable to Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by Lessor shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

14. Notices. Any notice required or permitted to be given hereunder shall be given in writing either by telex or by mail, and if mailed, shall be sent, first-class postage prepaid, addressed as follows:

If to Lessor: Mr. Peter Schan
Vice President
Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, NJ 07632

If to Lessee: Chicago and North Western
Transportation Company
One North Western Center
Chicago, Illinois 60606
Attention: Vice President
Equipment Management

Either party hereto may change the address to which notice is to be mailed by written notice thereof to the other.

15. Governing Law. The Lease shall be governed by and construed in accordance with the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

16. Miscellaneous. (a) This Lease shall be binding upon, and inure to the benefit of, the parties hereto, their respective successors and assigns, except that Lessee may not assign this Lease or any of its rights hereunder without the prior written consent of the Lessor, which will not be unreasonably withheld.

(b) The waiver of any right accruing to any party by failure of that party to exercise that right in a given instance, or delay in exercising that right, shall not be deemed a waiver of that right in future instances of a similar nature or affect any other right, power or remedy available to that party.

(c) Nothing contained herein shall be construed in any way whatsoever so as to constitute or establish a partnership, joint venture or contract of employment between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this
Lease to be executed on the day and year first written.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

(Corp. Seal)

Attest:

By:

Title:

RO Jahnke
Vice President
Equipment Management

Alba M. Fanelli
Assistant Secretary

REX RAILWAYS, INC.

(Corp. Seal)

Attest:

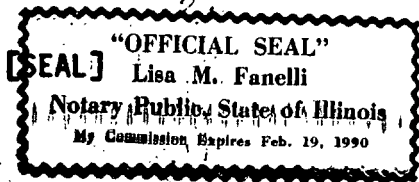
By:

Title:

Janet Maguire
L60-6

STATE OF ILLINOIS)
COUNTY OF COOK) SS

On this 8th day of July, 1986, before me personally appeared ROBERT A. JAHNKE, to me personally known, who being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Lisa M. Fanelli
Notary Public

My commission expires:

Feb. 19, 1990

STATE OF NEW JERSEY)

COUNTY OF BERGEN

On this 14 day of July, 1986 before me personally appeared PETER SCHAN, to me personally known, who being by me duly sworn, says that he is a Vice President of REX LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Rubin Schertz
Notary Public

My commission expires:

RUBIN SCHERTZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 16, 1987

Verification 1

pb